Remarks

The Office Action mailed March 17, 2008, is ambiguous in at least two areas, making it difficult for Applicants to know what they are responding to. On the page entitled Office Action Summary, block 1) indicates this Office Action is in response to the amendment Applicants filed on June 24, 2007. However, Applicants filed a subsequent amendment on December 6, 2007, and this Office Action should be in response to that amendment. Further, blocks 2a) and 2b) are both checked, indicating the action is both final and non-final. It cannot be both, and Applicants are unsure whether they are entitled to another action and response before an Appeal or RCE should be filed.

In the interest of furthering prosecution, Applicants assumed the worst case scenario by responding to the rejections in the Office action and mailing this response to the AF mail stop. However, to insure fairness in the process, Applicants request that the Examiner mail another Office action, with another 6 month period for response, clarifying these issues, so that Applicants may prepare a proper response based on known conditions.

Claim rejections

Claims 1-27 have been rejected under 35 USC 103(a) as being anticipated by U.S. patent no. 6,122,265 ("Nakamura") in view of U.S. patent no. 6,498,785 ("Derryberry") and U.S. patent no. 6,141,565 ("Feuerstein"). Applicants respectfully traverse this

rejection because the cited references do not disclose or suggest every element of any pending claim, as the following analysis shows.

Independent claims 1, 8, 12, 16, and 22 each recite, in various language and with various levels of specificity, performing these operations within a mobile station in a wireless communications network:

1) transmitting at two different power levels, and

2) determining the resulting volume of network communications (claims 1, 16, 22), or data throughput (claims 8, 12) subsequent to each transmitted power level.

The rejections of these limitations appear to be as follows:

In section 1 on page 2 of the Office Action, the rejection cites Nakamura (col. 4 line 48 – col. 5 line 6) for teaching "adaptive transmit power control . . . wherein the network traffic parameter is based on . . . a volume of communications observed by the mobile station". However, this passage of Nakamura mentions nothing about adaptive power control. The entire Nakamura patent is focused on using wired connections in a manner based on the quality of wireless communications. No mention is made of wireless transmission power levels. The statement that Nakamura teaches adaptive transmit power control based on the volume of communications is in error.

Section 1 on page 3 of the Office action further states (correctly) that Derryberry does not teach observing the volume of communications resulting from the different power levels. The rejection then states (also on page 3) that Feuerstein teaches adaptive transmit power control in wireless devices . . . based on an "observed capacity, which

reads on claimed volume, of communications". Equating capacity to observed volume is incorrect. Capacity and volume are two entirely different parameters. Network capacity is a measure of the maximum amount of traffic that the network is capable of handling, and is typically a theoretically derived value. Volume is a measure of how much traffic the network is actually handling, regardless of any theoretical maximum values. The claimed limitation is based on how much traffic the network is actually handling, not the maximum amount of traffic that the network could theoretically handle. Nowhere does Feuerstein teach that the volume of network communications is measured based on two different transmit power levels.

The remaining pending claims each depends directly or indirectly from one of claims 1, 8, 12, 16, or 22, and therefore contains the same limitations not disclosed or suggested by the cited references.

Conclusion

For the foregoing reasons, it is submitted that the application is in condition for allowance, and indication of allowance by the Examiner is respectfully requested. If the Examiner has any questions concerning this application, he or she is requested to telephone the undersigned at the telephone number shown below as soon as possible.

Respectfully submitted,

Date: May 2, 2008

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